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The *unclear* and *uneasy* role of state courts in implementing federal policy

The Bipartisan Safer Communities Act (BSCA) was enacted in 2022. One of the law's goals is to reduce gun violence by strengthening background checks for potential gun purchasers between the ages of 18 and 21. It also closes the “boy-friend loophole,” which previously enabled non-spousal partners with a criminal history of domestic violence to acquire firearms. To support states' compliance efforts, the BSCA provides funding for state-based mental health and violence prevention services.

The BSCA is one example of the critical role that state courts play in implementing federal policy. Under the Act, state courts must share juvenile records with state and federal authorities. But wide variation in how each state handles juvenile justice and recordkeeping presents logistical challenges that make the law difficult — and in some places nearly impossible — to implement.

State courts play an important but often overlooked role in implementing federal policy. According to one study conducted by the National Center for State Courts,¹ over 275 sections of the U.S. Code ask state courts to either take or refrain from taking action regarding federal matters. Another

ABOVE: THE U.S. AND NORTH CAROLINA STATE FLAGS FLY OVER THE NORTH CAROLINA SUPREME COURT BUILDING IN RALEIGH, N.C. (ISTOCK.COM)

inquiry from the same study yielded over 300 provisions of federal law in which Congress imposes obligations on state courts. These policies touch on everything from national defense to foreign relations, child welfare to crime control, conservation to banking and finance, employment rights, trademark enforcement, consumer protection, and transportation.

It's clear that state courts play a critical role in federal policy. But as underscored by the complications arising from the BSCA's implementation, that role is not always straightforward.

Under the BSCA, the National Instant Criminal Background Check System (NICS) — operated by the FBI — is required to contact state authorities to determine whether a potential purchaser under 21 has a disqualifying juvenile record or mental health adjudication that may prevent them from purchasing a firearm.² The BSCA also amended existing federal gun control legislation by adding the phrase “including as a juvenile” to the list of disqualifying offenses that prohibit individuals from buying a firearm under 18 U.S.C. § 922(d)³ (Section 922(d) lists other disqualifying conditions such as having renounced one's citizenship, having significant mental health issues, or being under indictment or having been convicted of any felony offense).⁴

When an individual seeks to purchase a gun from a federally licensed firearms dealer, prior to making the sale, licensees who contact NICS for the purpose of conducting a background check must wait for NICS to contact state authorities to determine whether the individual is a prohib-

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ited person under the Act.⁵ In the case of potential purchasers under 21, this involves NICS contacting state criminal history repositories, juvenile justice information systems, and local law enforcement agencies. For this to occur, state courts must first share relevant information under the law with the state repository. And in some cases, state courts themselves may receive an NICS inquiry if they house juvenile records.⁶

But ambiguities in interpretation and incongruities in application have left some state courts unsure of what information they are required to share under the BSCA. Further, many states protect juvenile records in a way that limits their disclosure except under

certain circumstances. Whether these circumstances include compliance with the BSCA is unclear. These challenges are compounded by conflicts between state and federal law and raise potential issues of preemption.

One major issue is that federal and state law use competing terminology to refer to juvenile offenses. As a result, some state courts cannot follow certain provisions of the BSCA because their laws do not have a state equivalent to the federal text. State courts typically refrain from finding juveniles “guilty” or from determining that a juvenile has been “convicted” of a “crime.” Rather, state courts recognize the difference between juvenile court proceedings and adult criminal proceedings by referring to juvenile “adjudications” for certain “acts” or “offenses.”⁷ Additionally, many states have laws prohibiting juvenile adjudications from being treated like adult convictions.

For instance, the BSCA prohibits a potential buyer under 21 from purchasing a firearm if, as a juvenile, the person was “under indictment for” or “convicted” of a “crime” punishable by a prison term of greater than one year.⁸ Because state courts distinguish juvenile offenses from adult crimes and do not recognize juveniles as having been “convicted” of a “crime,”⁹ some state courts cannot provide relevant records to NICS or the state agencies responsible for transmitting the information to NICS.

Another example of this legislative incongruity relates to gun prohibitions based on mental health history. The BSCA amended 18 U.S.C. § 922(d)(4) — which bars someone from purchasing a

firearm if the person was previously “adjudicated as a mental defective” or “committed to any mental institution” — to clarify that a person falls under this category only if these events occurred when the person was “16 years of age or older.”¹⁰

While this amendment may seek to ensure that the law is not punishing those who experienced mental illness as young children but have since been effectively treated, it does not recognize that some states neither adjudicate juveniles as “mental[ly] defective” nor “commit” juveniles to mental institutions.¹¹ Instead, they may rely upon separate abuse, neglect, or dependency statutory processes to address juvenile mental health concerns. As a result, some state courts may be unable to share certain juvenile mental health records.

As states wrestle with the implementation of the BSCA, perhaps these challenges will lead to improved coordination and greater consideration of the role state courts must play in the development and implementation of federal policy.

Other states may adjudicate juveniles as “mental[ly] defective” but define the term differently than federal law. Although this provision has been defined by federal regulation,¹² and states are generally bound by agency interpretation of federal law, not all state definitions of “adjudicated as a mental defective” may be covered by the federal regulation. States may define “adjudicated as a mental defective” as a juvenile ordered to complete inpatient mental health treatment, a juvenile with an intellectual disability,

or a juvenile found not competent to proceed. While the regulation appears to cover these definitions, others may not fall within the regulation’s scope. As a result, some state courts are left unsure of what juvenile mental health records may be shared under the BSCA.

The NCSC has published a document outlining issues state courts

should consider when developing policies and procedures for implementing the BSCA, including information on adapting existing information-sharing systems to facilitate appropriate sharing of records. For more information and guidance, see <http://tinyurl.com/yeysv6fm>.

State courts play a larger role in our federal system than just hearing state cases. They have concurrent jurisdiction with federal courts, and they can decide issues of federal law. State procedural law often governs the course of federal claims in state courts, and state procedural rulings over a federal issue are typically respected by a federal court.¹³ State courts are also obligated by Congress to fulfill a variety of federal legislative mandates. As states wrestle with the implementation of the BSCA, perhaps these challenges will lead to improved coordination and greater consideration of the role state courts must play in the development and implementation of federal policy.

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¹ See generally NAT’L CTR. FOR STATE CTS., THE ROLE OF STATE COURTS IN OUR FEDERAL SYSTEM (2022) (addressing federal statutes that expressly impose burdens on state courts), https://www.ncsc.org/_data/assets/pdf_file/0020/74207/The-Role-of-State-Courts-in-our-Federal-System.pdf.

² Bipartisan Safer Communities Act, Pub. L. No. 117-159, 136 Stat. 1313, § 12001(a)(2) (2022). The extent to which state authorities are required to cooperate with federal authorities under this system is unclear. See *Printz v. United States*, 521 U.S. 898, 935 (1997).

³ Notably, Congress did not amend corresponding 18 U.S.C. § 922(g), which deals with shipping, possessing, or receiving any firearm through interstate commerce, to include acts committed while a juvenile. This presents the issue of whether under the BSCA, an individual with certain juvenile records may be prohibited from purchasing but may be permitted to possess a firearm. See

Robert Leider, *The Bipartisan Safer Communities Act: Doctrinal and Policy Problems*, 49 J. LEGIS. 234, 243 (2023).

⁴ 18 U.S.C. § 922(d).

⁵ Bipartisan Safer Communities Act § 12001(a)(2).

⁶ See Memorandum from the Mich. Sup. Ct. State Ct. Admin. Off. on Access to Juvenile Records — Bipartisan Safer Communities Act (Jan. 12, 2023), [<https://perma.cc/5S9M-7Q47>].

⁷ See, e.g., 237 Pa. Code § 409 (2018); see also Alan Siraco, Kathryn Seligman & Richard Braucher, *Basic Juvenile Criminal Law and Procedure*, FIRST DIST. APP. PROJECT 1 (2011), <https://www.fdap.org/wp-content/uploads/2020/11/BasicJuvenileCriminalLawAndProcedure-2011.pdf>.

⁸ 18 U.S.C. § 922(d)(1).

⁹ For example, Ky. Rev. Stat. § 635.040 (West 1986) states, “No adjudication by a juvenile session of District Court shall be deemed a conviction, nor

shall such adjudication operate to impose any of the civil disabilities ordinarily resulting from a criminal conviction, nor shall any child be found guilty or deemed a criminal by reason of such adjudication.”

¹⁰ Bipartisan Safer Communities Act § 12001(a)(1)(A)(ii).

¹¹ For example, W. Va. Code §61-7A-2 (2022) clarifies that a child younger than 14 is neither considered “a person adjudicated as a mental defective,” nor is considered “committed to a mental institution” for the purposes of 18 U.S.C. 922(g).

¹² See 27 C.F.R. § 478.11 (2024).

¹³ Nat’l Ctr. for State Cts., *supra* note 1, at 10.